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OFFICE OF PETITIONS

In re Application of
Robert J. Devins et al.
Application No. 10/060,750
Filed: January 30, 2002
Attorney Docket No: BUR9-2001-0016-US1

ON PETITION

This is a decision on the petition to withdraw the holding of abandonment, filed January 30, 2007, under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition is **GRANTED**.

This application became abandoned on July 13, 2006, for failure to file an Appeal Brief, in response to a Notice of Panel Decision from Pre Appeal Brief Review, mailed June 6, 2006, which set a period of response of the greater of one (1) month from the mailing of the Notice or two (2) months from the filing of the May 12, 2006 Notice of Appeal. Accordingly, a Notice of Abandonment was mailed January 17, 2007. Petitioner asserts that the office communication mailed June 6, 2006 was never received.

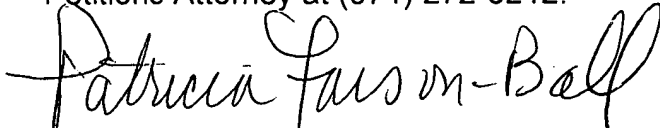
The file record discloses that the office communication was mailed to the address of record which is the same address used on all correspondences from the USPTO including the Notice of Abandonment. Petitioner has provided a copy of the docket report, wherein receipt of the office communication mailed June 6, 2006 would have been filed, had it been received. To further show that the office communication mailed June 6, 2006 was not received, petitioner explains that after searching the file jacket it was concluded that no correspondence was received for this matter from the USPTO,

In that the statement from the petitioner and the exhibit from the docket record for the instant matter show no entry indicating receipt of the office communication mailed June 6, 2006, it is apparent that it was not received. The evidence submitted corroborates non-receipt of the office communication.

In view of the facts set forth in the petition, it is concluded that the office communication was never received at the address of record. Accordingly, the holding of abandonment is withdrawn and no petition fee is due.

This matter is being referred to Technology Center 2123 for a re-mailing of the Notice of Panel Decision from Pre Appeal Brief Review originally mailed June 6, 2006 and for a restarting of the period for response.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large initial "P".

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions